REMARKS

Applicants request clarification. In sets 2-20, 28 groups are indicated; however, there are only 27 PA molecules on which the Office has seemed to base its restriction. For example, the second set, Groups 28-55, contains 28 groups, not 27. Applicants will retain the numbering as provided in the Restriction Requirement, assuming that the 28th group in each set does not correspond to any PA sequence.

Restriction is only proper if the identified groups are independent or patentably distinct (MPEP § 803). The burden is on the Office to provide reasons and/or examples to support its conclusion that the identified groups are independent or distinct.

The Office has characterized Groups 252-391 and 560-562 as separate and distinct products which are made by materially different methods and are used in materially different methods which have different modes of operation, different functions and different effects. However, the Office has failed to provide an explanation of how these products are made by materially different methods and are used in materially different methods which have different modes of operation, different functions and different effects. An example to illustrate the restriction has not been provided. The Office has not cited any section of the MPEP to support the restriction. The Office has made a simple assertion without support.

The Office has characterized Groups 1-251, 392-559 and 563-564 as materially distinct methods that differ at least in objectives, method steps, reagents and/or dosages and/or schedules used, response variables, and criteria for success. The Office has not provide an example or an explanation to demonstrate how these Groups are materially distinct methods that differ at least in objectives, method steps, reagents and/or dosages, and/or schedules used, response variables, and criteria for success. Furthermore, no section of the MPEP has been cited. The Office has simply made an assertion without support.

The Office has characterized Groups 280-307, Groups 1-139 and 420-447 as related as products and processes of use. The Office states, citing MPEP § 806.05(h), that inventions can be shown to be distinct if either or both of the following can be shown: (i) the process for using the product as claimed can be practiced with another materially different product; or, (ii) the product as claimed can be used in a materially different process of using that product. No explanation has been given for how the example of nucleic acid products, as claimed, can be used in affinity chromatography or how this process is materially different from the claimed process.

The Office has characterized Groups 308-391 and Groups 168-195, 392-419, 448-503 as related as products and processes of use. The Office again cites MPEP § 806.05(h), stating that inventions can be shown to be distinct if either or both of the following can be shown: (i) the process for using the product as claimed can be practiced with another materially different product; or, (ii) the product as claimed can be used in a materially different process of using that product, and asserting that the polypeptide products, as claimed, can be used in a materially different process such as affinity chromatography. The Office has not explained how the polypeptide products, as claimed, can be used in affinity chromatography or how this process is materially different from the claimed process.

The Office has characterized Group 560 and Group 563 as related as product and process of use. The Office again cites MPEP § 806.05(h), stating that inventions can be shown to be distinct if either or both of the following can be shown: (i) the process for using the product as claimed can be practiced with another materially different product; or, (ii) the product as claimed can be used in a materially different process of using that product. The Office asserts that the nucleic acid product can be used in a materially different process such as affinity chromatography. The Office has not explained how the nucleic acid product, as claimed, can be used in affinity chromatography, or how this process is materially different from the claimed process.

The Office has characterized Group 561 and Group 564 as related as product and process of use. The Office again cites MPEP § 806.05(h), stating that inventions can be shown to be distinct if either or both of the following can be shown: (i) the process for using the product as claimed can be practiced with another materially different product; or, (ii) the product as claimed can be used in a materially different process of using that product, and asserting that the polypeptide products, as claimed, can be used in a materially different process such as affinity chromatography. The Office has not explained how the polypeptide products, as claimed, can be used in affinity chromatography, or how this process is materially different from the claimed process.

Finally, the Office has not provided reasons and/or examples for every individual group. For example, nowhere is the distinctness of the 27 PA sequences alleged. Additionally, the Office has not provided examples and/or reasons for many of its other restrictions. For example, nowhere does the Office explain the division of claims 1-5 (see sets 1 and 2) into two separate groups. Likewise, the Office has divided independent claim 30 into four distinct sets (sets 6-9),

but the Office has not provided any reasons or examples. Furthermore, the Office has restricted claims 56-57 into two separate sets (17 and 19). Set 17 is drawn to a method of inhibiting angiogenesis comprising administering one PA polypeptide, or one agonist of a PA polypeptide or one antagonist of a polypeptide, while set 19 is directed to the same method, comprising administering an anti-PA antibody. The Office has failed to explain or provide examples to support its assertion of the patentable distinctness of these groups. The Office has not met its burden as outlined in MPEP § 803.

The Office states that the elected claim 48 is generic to a plurality of disclosed patentably distinct species, comprising: a cardiovascular agent, an endothelial agent, an angiogenic agent, or angiostatic agent. The Office asserts that the products of these species represent separate and distinct molecules with different structures and functions, such that one species could not be interchanged with the other. Applicants respectfully traverse.

Election of species is for search purpose only. If no search results are found for elected species, the search should be continued. Furthermore, the burden rests upon the Office to demonstrate that species are patentably distinct.

Applicants submit that the Office has not met the necessary burden in order to sustain the Restriction Requirement. Withdrawal is therefore respectfully requested.

Respectfully submitted,

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